



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Tiffany R. Severs
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PACTIV LLC
Registration No. 80515**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the Department and Pactiv LLC for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
2. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
3. "Facility" means the Pactiv facility, located at 149 Grand Caverns Drive, Grottoes, Virginia 24441.
4. "FCE" means a full compliance evaluation by DEQ staff.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
7. "Pactiv" means Pactiv LLC, a limited liability company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Pactiv is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Permit" means a minor New Source Review (NSR) permit to construct and operate a PVC film extrusion facility, issued under the Virginia Air Pollution Control Law and the Regulations to Pactiv on May 28, 2019.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Pactiv LLC owns and operates a PVC film extrusion facility located at 149 Grand Caverns Drive, Grottoes, VA 24441. Pactiv operates the Facility subject to the Permit, issued by DEQ on May 28, 2019.
2. On May 6, 2020, DEQ staff performed a FCE at the Facility and observed the following:
 - a. ESP Trion B, which serves as the control device for Extruders 11-14, was offline while some of the extruders were still online on the following dates: 1/22/2018, 2/23/2018, 11/6/2018, 11/16-11/19/2018, 3/19/2019 and 12/30/2019.
 - b. Bypass events dated 1/22/2018, 2/23/2018, 11/6/2018, 11/16-19/2018, 3/19/2019 and 12/30/2019 indicate potential exceedance of the hourly emission limit for Extruders 11-14 due to ESP Trion B being offline.
3. Condition 3 of the Permit states: "Emission Controls – Particulate emissions from each PVC film extruder shall be controlled by an emissions hood and electrostatic precipitation:

Equipment Control Device

PVC Extruders 11 – 14 Trion B ESP Unit
PVC Extruders 15 – 18 UAS – East ESP Unit
PVC Extruders 19 – 22 UAS – West ESP Unit

The control equipment shall be provided with adequate access for inspection and shall be in operation when the PVC film extruders are operating.”

4. Condition 14 of the Permit states: “Process Emission Limits – Emissions from the operation of the PVC film extruders shall not exceed the limitations specified below:

Equipment Particulate Matter (PM / PM-10)

	lbs/hr	tons/yr
Extruder 11	0.3	1.3
Extruder 12	0.3	1.3
Extruder 13	0.3	1.4
Extruder 14	0.3	1.4
Extruders 15 and 16	0.5	2.0
Extruders 17 and 18	0.82	3.57
Extruders 19 – 22	1.93	8.44

Annual emissions shall be calculated monthly as the sum of each consecutive 12-month period. These emissions are derived from the estimated overall emissions contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 3 and 13.”

5. On June 11, 2020, DEQ issued NOV No. AVRO001540-001, to Pactiv for violation of the Air Pollution Control Law, Regulations, and the Permit.
6. On June 22, 2020, DEQ and Pactiv held a conference call meeting to discuss the NOV and steps forward.
7. On June 24, 2020, Pactiv provided a written response to the NOV indicating the overall excess emissions from the bypass events was 57 lbs of PM/PM-10 total for the duration of all reported episodes.
8. Based on the results of the May 6, 2020, inspection, and documentation submitted by Pactiv on June 24, 2020, the Department concludes that Pactiv has violated Conditions 3 and 14 of the Permit.
9. Pactiv has submitted documentation that verifies that the violations described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Department orders Pactiv LLC, and Pactiv LLC agrees to:

1. Pay a civil charge of \$5,227.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pactiv LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Pactiv shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Pactiv for good cause shown by Pactiv, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Pactiv admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pactiv consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pactiv declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.

6. Failure by Pactiv to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pactiv shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Pactiv shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pactiv shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pactiv. Nevertheless, Pactiv agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. the Director or his designee terminates the Order after Pactiv has completed all of the requirements of the Order;
- b. Pactiv petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director terminates the Order in his or its sole discretion upon 30 days' written notice to Pactiv.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pactiv from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pactiv and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Pactiv certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pactiv to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pactiv.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Pactiv voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of January, 2023.

Tiffany R. Severs, Regional Director
Department of Environmental Quality

Pactiv LLC voluntarily agrees to the issuance of this Order.

Date: 11/18/2023 By: Kimberly R. Shiffitt, Plant Manager
(Person) (Title)
Pactiv LLC

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 18th day of
January, 2023 by Kimberly R. Shiffitt who is
Plant Manager of Pactiv LLC, on behalf of the corporation.

Carolyn R. Rohrer
Notary Public

7793920
Registration No.

My commission expires: 10-31-2026

Notary seal:

